

PART II—Section 277

Bills and Reports of Select Committees on Bills.

PARLIAMENT OF INDIA.

The following Bills were introduced in Parliament on the 12th April, 1951 :—

BILL NO. 74 OF 1950

A Bill to provide for the appointment of persons to the office of Kazi and for performing and keeping a record of marriages and for the appointment of Tribunals for trying and deciding cases of divorce and dissolution of marriage amongst Muslims.

Be it enacted by Parliament as follows :—

1. *Short title, commencement and extent.*—(1) This Act may be called the Muslim Kazis Act, 19

(2) It shall come into force at once.

(3) It extends to the whole of India.

2. *Appointment of Kazis and Tribunals.*—(1) In accordance with the provisions contained in this Act State Governments shall appoint persons with proper qualifications as Kazis for presiding at Muslim marriages and performing other religious ceremonies, at which the presence of Kazi is necessary according to Muslim Law and usage. The State Governments shall further appoint Tribunals for deciding suits relating to divorce and dissolution of marriages amongst Muslims.

(2) For the purpose of selection and nomination of candidates for the posts of Kazis and for the membership of the Tribunals, the State Government shall appoint in each District, a committee, called the District Committee.

3. *Composition, term and duties of District Committees.*—(1) The District Committee shall consist of the following members :—

(a) The District Judge of the District who shall also be the president of the District Committee.

(b) The Collector or the Deputy Commissioner of the District who shall also be the convenor of the District Committee.

(c) One Muslim Vakil or Advocate elected by the Muslim Vakils and advocates of the District.

(d) One Muslim member of a Municipal Board of the District elected by the Muslim members of the Municipal Board of the District.

(e) Two Ulemas elected by the Ulemas of the District holding certificates of Colleges mentioned in Schedule 'A' to this Act.

(f) All the Muslim members of the Legislative Assemblies of States, and Parliament.

(2) The members shall hold office for a period of five years but in the case of a seat falling vacant during this period the vacancy shall be filled up by the election of a member from the class to which the late member belonged and such member shall hold office for the remaining period.

(3) The quorum of the District Committee shall be five.

(4) The duties of the District Committee shall be;

(a) to make recommendations to the State Government about the number of Kazis necessary for the District and their proposed jurisdictions.

(b) to make recommendations to the State Government about the number of Tribunals for trying divorce and dissolution of marriage suits and their proposed jurisdictions.

(c) to recommend to the Local Government the names of persons, with requisite qualifications, who are to be appointed as Kazis and as members of the Tribunals.

(d) to supervise the work of Kazis and Tribunals of the District and to make occasional reports about their work to the Government.

4. *Procedure for the appointment and removal of Kazis.*—(1) The Kazi shall be appointed by the State Government on the recommendation of the District Committee, and shall not be removeable from his office, but for incapacity or misconduct in the discharge of his public duties, or acts of profligacy in his private conduct, proved to the satisfaction of the State Government.

(2) The District Committee shall report to the State Government every instance in which it may appear to them that any Kazi in the District is incapable, or in which it may be proved to their satisfaction that he has been guilty of negligence or misconduct in the discharge of his public duty or of acts of profligacy, in his private conduct.

5. *Qualifications for the post of a Kazi.*—(1) For an appointment to the post of a Kazi a person must be educated, honest, conscientious and well versed in questions relating to marriages, divorce and dissolution of marriages :

Provided that for appointment to the Tribunal for dissolution of marriages he shall have obtained a certificate from any of the Islamia Schools mentioned in Schedule 'A' to this Act, and further shall have passed an examination of the said Schools in Heilat-un-Najaza and Alamgiri (Chapters on *Nikah* and *Talak* only) held specially for the purpose.

(2) In making appointments to the post of a Kazi, preference shall be given to a person who in addition to the qualification mentioned in sub-section (1) is held in esteem by the Muslims of the city, town or purganah in which he is to hold office, due to the status if his family or belongs to a family in which the post of Kazi had been hereditary in the past.

6. *Appointment, qualifications, and removal of Naib Kazis.*—(1) Subject to the approval of the District Committee a Kazi shall have power to appoint one or more Naib Kazis.

(2) A Naib Kazi shall be required to be literate and conversant with questions relating to marriages.

(3) A Kazi shall have power to remove his Naib Kazi.

7. *Maintenance of records of marriages and suits.*—(1) The Kazi either by himself or through his Naib Kazi shall keep a regular record of marriages taking place within his jurisdiction, giving the names of the parties to the marriage; of the guardian of the marriage—if any—of the vakil—if any, of the witnesses to the marriage, and of the person who performed the *nikah* ceremony, and the record shall be signed by all of them. The age of the parties, the fact as to whether the marriage is a first or second one, the amount of dower—with details of prompt and deferred, the date of marriage and the date of entry shall also be recorded. A copy of the record shall be given to each of the parties.

429
(2) Subject to the provisions of sub-sections (2) and (3) of section 8 when an entry is made in the record of Kazi regarding marriages which have not been performed by the Kazi or one of his Naibs all the details mentioned in sub-section (1) of this section shall be filled up but the record may be signed by the parties and their guardians if any, only :

Provided that before making the entries the Kazi shall satisfy himself as to the factum of marriage, and would make remarks to the effect in the register as to whether he considers it to be genuine or otherwise. For this purpose the Kazi may get the record signed by such other persons as were present at the time of marriage.

(3) The Kazis who are members of a Tribunal for dissolution of marriages shall further keep record of the suits tried by the Tribunal giving details in accordance with the rules framed by the State Government in this behalf.

8. *Marriage fees and the right of parties to a marriage.*—(1) The fees for every marriage shall be two rupees and eight annas. The parties to the marriage, however, may give any larger amount to the Kazi at their option.

(2) If in spite of invitation, a Kazi or Naib Kazi fails to attend a marriage, and the marriage is celebrated in their absence, the parties to the marriage and their guardians, if any, shall be entitled to get entries made in the record of the Kazi without payment of any fee within fifteen days of the marriage, and with the payment of two rupees and eight annas thereafter :

Provided that no entries shall be made after the lapse of thirty days after the marriage.

(3) If a marriage is celebrated without the information of Kazi or Naib Kazi by some other person the parties to the marriage and their guardians, if any, shall be entitled to get entries made in the record of the Kazi after payment of rupees five within fifteen days of marriage and with payment of ten rupees thereafter :

Provided that no entry shall be made after the lapse of thirty days of the marriage.

(4) Any person placing reliance or leading evidence in any civil or criminal suit in respect of marriage which was celebrated after this Act comes into force, and which is not entered in the register of the Kazi, shall have to pay a penalty of rupees fifteen before he can be allowed to place reliance on or lead evidence in respect of such marriage.

9. *Composition and functions of the Divorce and Dissolution of Marriage Tribunals.*—(1) The Tribunal which shall be appointed to decide the divorce and dissolution of marriage cases shall consist of the following members :—

- (i) one Kazi out of the Kazis of the District,
- (ii) two Muslim Vakils or Advocates from the Muslim Vakils or Advocates of the District ; and
- (iii) two Ulemas from the Ulemas of the District holding certificate of any of the Schools mentioned in Schedule 'A' to this Act.

(2) The District Committee shall make recommendations to the State Government of names of the members of the Tribunals according to sub-section (1) and the State Government shall make the appointments.

(3) The Tribunal shall try and decide suits relating to marriages, divorce and dissolution of marriages falling within its jurisdiction.

430
10. *Procedure for obtaining a divorce or dissolution of marriage.*—(1) Any person desirous of having a divorce or getting a marriage dissolved, or getting a declaration to that effect may file a plaint in accordance with the provisions of the Code of Civil Procedure, 1908 (V of 1908), before the Kazi or a person appointed by the Kazi for receiving such plaints.

(2) A fee of fifteen rupees shall have to be deposited with each plaint. This sum shall be utilized for the expenses of the Tribunal and shall be at the disposal of the Kazi.

(3) The Kazi in consultation with the Tribunal shall fix dates for the filing of written statement and of the hearing of the suit.

(4) The summons on the defendant and on the witnesses shall be served through the Civil Court of the Lowest Grade having jurisdiction in the area, and the parties concerned shall have to deposit process fee and diet money in accordance with the rules of the Civil Court.

(5) The quorum of the Tribunal shall be three :

Provided that at least the same three members shall hear the suit throughout.

(6) The decisions of the suit shall be according to the opinion of the majority and in case of equality of votes the Kazi shall have a second or casting vote.

(7) The majority shall write the judgment and sign it, but the final order shall be signed by only one member, preferably by the Kazi if he happens to be with the majority.

11. *Term of appointment of members of the Tribunal.*—(1) The members of the Tribunal will be honorary, and shall be appointed for a period of five years, but would be eligible for re-appointment after the expiry of their term :

Provided that if during the hearing of the suit the period of a Tribunal or of one of its members comes to a close, even then they will have a right to finish the suit or suits, but they will not be entitled to hear new suits.

(2) If during the term of the Tribunal a vacancy falls, due to the resignation, retirement, death or other cause, it would be filled up by nomination according to section 9 from the group from which such member had been nominated :

Provided that so long as the number of the members of the Tribunal does not fall below three, nothing done by the Tribunal shall be deemed to be invalid merely by the reason that the number of the members of the Tribunal was at any time less than five.

12. *Powers of the Tribunal in respect of the dower-debt.*—The Tribunal shall have no power to pass any judgment in respect of any dower-debt except that it may record a compromise between the parties, in respect of renunciation of dower-debt or part thereof, in lieu of dissolution of marriage.

13. *Remedy against the decision of the Kazi.*—(1) Any one dissatisfied with the judgment and decree of the Tribunal may apply to the Kazi to send the record to the District Judge for obtaining his opinion thereon.

(2) On the presentation of such an application the Kazi shall send the whole record to the District Judge with a request to give his opinion thereon both on matters of fact and of law.

(3) The District Judge after notice to the parties and hearing such of them as want to be heard shall give his opinion and send back the record to the Kazi,

431
and the Kazi shall pass judgment and decree according to the opinion of the District Judge :

Provided that the District Judge may send the record to any one of his Subordinate Courts having the power of hearing appeals under the Code of Civil Procedure, 1908 (V of 1908), to give its opinion, and the opinion of such court shall have the same effect as the opinion of the District Judge.

14. *Remedy against the decision of the District Judge.*—(1) Any party dissatisfied with the opinion of the District Judge may apply to the Kazi for sending the record of his case to the High Court for opinion.

(2) On the presentation of such an application the Kazi shall send the record with the opinion of District Judge to the High Court.

(3) The High Court shall after notice to the opposite party give its opinion on the same points on which it hears second appeals under section 100 of the Code of Civil Procedure, 1908 (V of 1908).

(4) The procedure provided by the Code of Civil Procedure, 1908 (V of 1908), for the hearing of the second appeals from the decree shall be followed for the disposal of these cases.

(5) On receipt of the opinion of the High Court the Kazi shall pass a decree in accordance with the opinion of the High Court.

15. *Proceedings before the Tribunal.*—All the proceedings before the Tribunal shall be in accordance with the Code of Civil Procedure, 1908 (V of 1908), and the Tribunal for purposes of trial of suits under this Act shall be deemed to be a Court.

16. *Power of the State Governments to make rules.*—(1) The State Government may make rules consistent with this Act for the purpose of carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the State Government shall have power to make rules with reference to the following matters :—

(a) For the election of the members of the District Committee under section 3.

(b) For the selection and nomination of the Kazis and members of the Tribunal under sections 4 and 9.

(c) For the holding of the meetings of the District Committee and the procedure to be adopted by the Committee.

(d) For the reports to be made by the District Committee to the State Government.

17. *Power of the State Governments to alter the Act.*—The State Government shall have power to make alterations in this Act in the following matters :—

(a) Making necessary amendments, alterations or additions to the entries required to be made in the records under section 7.

(b) Increasing or decreasing the fees prescribed in section 8 of the Act.

(c) Making necessary amendments, alterations in the list of Schools or Colleges given in Schedule 'A' to this Act.

18. *Repeal of Act XII of 1880.*—The Kazis Act, 1880 (Act XII of 1880) is hereby repealed.

SCHEDULE A 432

(See sections 3, 5, 9 and 17)

List of Approved Islamiah Schools and Colleges

Darul Ulum, Deoband.
 Mazahirul Ulum, Saharanpur.
 Madarash Khankah Imdadia, Thana Bhawan.
 Madarsah Shahi, Moradabad.
 Madarsah, Amroha.
 Madarsah, Gulauti.
 Madarsah, Budaon.
 Madarsah, Bareilly.
 Madarsah Illahiat, Kanpur.
 Arabic Madarsah, Allahabad.

STATEMENT OF OBJECTS AND REASONS

According to Muslim Law the decree of Kazi duly appointed by the State is necessary for certain socio-religious and religious matters such as dissolution of marriages. In addition to these the Kazi is to preside and perform certain ceremonies such as the marriage ceremony and is to conduct the Juma and Id prayers. After the settlement of Muhammadans in India, Kazis were appointed by the State for the cities, principal towns and in the purganahs for performing all the duties allotted to them by the Muslim Law. On the inception of the British Rule their status was recognised by the British Government also. Regulation XXXIX of 1793 was the first one in this connection. It was intended to provide for the recognition and appointment of Kazis and Kazi-ul-Kuzzat.

Gradually similar Regulations and Acts were passed for other provinces also. In addition to the Kazis, however, there used to be Hindu and Mohammadan Law Officers attached to the courts to help those courts in the administration of Hindu and Mohammadan Law respectively—the courts at the time having had no training in those branches of law. This had become necessary as the East India Company was gradually transferring the administration of justice from the hands of Indians to those of the English Judges—and was thus necessarily a transitory stage. It appears that in 1864 Hindu and Mohammadan Law Officers were deemed to have served their purpose in having given the necessary training to the English Judges and having produced sufficient quantity of legal precedent to guide future courts. They were no more required and were thus removed by Act XI of 1864. But along with the Hindu and Mohammadan Law Officers, the Regulations and Acts relating to Kazis were also repealed.

The Late Sir Ahmad Khan brought a Bill in the Legislative Council in 1880, which was passed as Act No. XII of 1880 and was named Kazis Act. That Act authorized the Local Government to appoint Kazis for any particular area on the desire of the Muslim community living in that area, but gave him absolutely no powers.

Thus it is only to meet a well recognized and old standing need of the Muslim community that this Bill is being introduced. Its scope is very restricted as it gives much smaller powers to the Kazi than the functions that were allotted to him under the Muslim Law or were even recognized by the earlier British Legislature. It deals chiefly with the registration of marriage, which is effected by the Kazis and for the disposal of suits relating to marriage, divorce and dissolution of marriages for which a tribunal consisting of a Kazi, an *Alim* and a *Vakil* has been proposed. As the Muslim personal law in this matter is very strict, provisions of appeals to the District Judge and the High Court have been effected in the form of opinion from those courts. While this would not very much alter the procedure in Indian Courts, it would meet the requirements of Muslim Law, and it is expected that the long-felt want of the Muslim community would be met by this Bill.

MOHAMMAD AHMAD KAZMI.

BILL No. 91 OF 1950

A Bill further to amend the Indian Penal Code (XLV of 1860) and the Code of Criminal Procedure (V of 1898).

BE it enacted by Parliament as follows :—

1. *Short title and commencement.*—(1) This Act may be called the Indian Penal Code and the Code of Criminal Procedure (Amendment) Act, 195

(2) It shall come into force at once.

2. *Amendment of section 375, Act XLV of 1860.*—In section 375 of the Indian Penal Code (XLV of 1860) in clause 'Fifthly' for the word "sixteen", the word "eighteen" shall be substituted.

3. *Amendment of section 376, Act XLV of 1860.*—To section 376 of the Indian Penal Code (XLV of 1860) the following shall be added at the end, namely :—

"or unless the woman is between sixteen and eighteen years of age and is a consenting party to the sexual intercourse in which case he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both".

4. *Amendment of Schedule II, Act V of 1898.*—In Schedule II to the Code of Criminal Procedure, 1898 (V of 1898) before the entry relating to the heading